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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 514

STATES STEAMSHIP COMPANY, a corporation, *Petitioner,*

v.

UNITED STATES OF AMERICA, ATLANTIC MUTUAL INSURANCE COMPANY, PACIFIC NATIONAL FIRE INSURANCE COMPANY and THE DOMINION OF CANADA, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

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February 3, 1959

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR REHEARING

Petitioner prays that this Court grant rehearing of its order of January 12, 1959, denying the petition for a writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in the above-entitled case as prayed for in the petition filed on November 13, 1958, herein.

Reasons for Granting Rehearing and Issuing the Writ

On January 2, 1959, subsequent to the filing of the petition in the instant case, a petition for a writ of certiorari was filed in *Peter Paul, Inc.* v. *Rederi A B Pulp*, No. 617, Oct. Term, 1958, seeking review of the judgment of the Court of Appeals for the Second Circuit, 258 F. 2d 901. This Court has not yet acted upon the *Peter Paul* petition.

Because of the pendency of the *Peter Paul* petition it is appropriate for this Court to reconsider its denial of certiorari in the instant proceeding. One factor making review of this case proper was stated in the petition (pp. 25-28) to be the direct conflict between the ruling below and that of the Court of Appeals for the Second Circuit in the *Peter Paul* case. It now appears that the *Peter Paul* petition (pp. 16-17) similarly states that the conflict between the two decisions makes review appropriate in that case.

Therefore, if this Court determines that the *Peter Paul* case should be accepted for review it undoubtedly would want to consider the instant case at the same time. But even if the *Peter Paul* case should not be accepted for review, in the belief that the result reached below was obviously correct, the basic conflict with the instant case would be intensified and would acquire a disturbing quality of permanency. In other words, the *Peter Paul* petition puts into sharp focus the conflict which makes review of the *State's Steamship* case so appropriate and necessary. It highlights the fact that it would be particularly helpful to the development of admiralty law and to the stability of the maritime industry to have a definitive resolution of the problem over

which the Courts of Appeals in these two cases have so sharply divided. That division is best illustrated by a comparative analysis of the two cases:

Peter Paul	*States Steamship*
1. The CHRISTER SALEN, an all-welded steel vessel, had been "roving the seven seas" since 1945. In February, 1951, it suffered a fracture or crack, starting at the top of the starboard sheer strake. The vessel broke in two and the forward half was a total loss.	1. The PENNSYLVANIA, an all-welded steel vessel, had been sailing the seas since 1944. In January, 1952, it suffered a fracture or crack down the portside, starting in the sheer strake. The vessel sank and was a total loss.
2. The vessel was found by the District Court to have been "notch brittle" at the point of origin of the fracture.	2. The vessel was found by the District Court to have been "crack sensitive."
3. Two or three months before the disaster, the CHRISTER SALEN suffered a crack at the top of its portside bulwark. This crack was duly repaired to the satisfaction of all appropriate authorities.	3. Two or three months before the disaster, the PENNSYLVANIA suffered a 22-foot crack in the deck, "which crack was fully repaired" to the satisfaction and approval of the United States Coast Guard, the American Bureau of Shipping, Lloyds of London, the United States Salvage Association and the repair yard. Later, the National Bureau of Standards found the tensile strength of the steel plates better than the original requirements.
4. A month before the disaster, the vessel was drydocked for normal maintenance purposes. It was inspected by Lloyds of London and the shell was found to be in good condition. The vessel was accordingly classified as seaworthy.	4. Two weeks before the disaster the vessel was drydocked for normal maintenance purposes. It was fully inspected by the United States Coast Guard and the American Bureau of Shipping and found to be seaworthy.

Peter Paul	*States Steamship*
5. The District Court found that the notch, where the crack started, was a latent defect not discoverable by any known or ordinary test. The Court concluded, therefore, that the owner was entitled to rely on the opinjon of Lloyds and that the owner had used due diligence within the meaning of the Carriage of Goods by Sea Act in failing to discover the unseaworthiness of the vessel.	5. The District Court was unable to determine "just what latent defects in hull or equipment were responsible for the disaster" but it did conclude that "any defects in the vessel which caused her to sink were not apparent." The Court found that the owner did not use due diligence within the meaning of the Carriage of Goods by Sea Act but that the unseaworthiness was without the privity or knowledge of the owner within the meaning of the Limitation of Liability Act.
6. The Court of Appeals affirmed, and held that the owner was entitled to accept the Lloyds report at its face value, absent evidence of bias, incompetence or fraud. It stated: "While a master is presumed to know the general characteristics of his ship, he is not required to possess the combined knowledge and skill of a naval architect and metallurgist."	6. The Court of Appeals originally affirmed, holding the evidence ample that the owner could not have known of the crack sensitivity, especially in light of the Bureau of Standards test. The Court of Appeals then reversed itself, however, and held that knowledge must be imputed to the owner since it was not entitled to rely on the various inspections by the Coast Guard, the Bureau of Shipping and others.
All the shipowner need establish, said the court, "is that normal precautions were taken to see that a discoverable notch did not exist" before the vessel left port.	To the shipowner was thus imputed complete knowledge of the crack sensitivity of its vessel, knowledge beyond that normally available to the Coast Guard or the Bureau of Shipping. To it was imputed "the combined knowledge and skill of a naval architect and metallurgist."

The conflict is thus clear and irreconcilable. Whether the issue be one of due diligence under the Carriage of Goods by Sea Act or knowledge and privity under the Limitation of Liability Act, the *Peter Paul* decision holds that the owner can accept competent inspection reports at their face value, while the *States Steamship* opinion holds that the shipowner must be charged with personal knowledge of latent defects undiscovered by competent inspections of reliable agencies.

That such a conflict should create confusion in the maritime industry is both natural and understandable. But more than confusion has resulted. The decision below, imposing on the shipowner an imputed knowledge of crack sensitivity far beyond that possessed by the most careful inspector of the Coast Guard or Bureau of Shipping, has produced utter chaos. Nearly 5,000 cases of minor hull cracking have been reported aboard welded vessels constructed by war-time shipyards. All of the owners of these vessels must now be held to possess actual knowledge that at some unpredictable time and at some undiscoverable place on the vessel another crack will develop. The result is that these owners—and indeed their insurers—will be unable to undertake such impossible risks and will have to junk their vessels or dispose of them at great losses.*

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*As stated in the Seattle *Daily Shipping News*, Jan. 19, 1959, p. 1, following the denial of certiorari in this case: "This news has been greeted with anxiety by owners of welded ships, in that the decision reverses the long-standing law that a vessel owner is only liable for cargo up to the value of the ship involved in a sea disaster. . . . A *new* attack on the Limitation of an Owner's Liability in case of disaster has been successful. Every American owner of war-built tonnage is deeply affected thereby. . . . The

Before such an economic loss occurs and before such a departure from the accepted principles of admiralty law is permitted to stand, this Court should review the matter thoroughly. The conflicting *Peter Paul* decision, now pending before this Court, is reason enough for granting such a review. But of even greater importance is the fact that the court below, in reversing itself and in ignoring the realities of admiralty law, has created an unwarranted exception to the Limitation of Liability Act. If there is to be such an exception by judicial amendment, review by this Court becomes of critical importance.

Court [of Appeals] appeared to have virtually ignored the full compliance, in the case of SS 'PENNSYLVANIA' with requirements of the United States Coast Guard and American Bureau of Shipping. A shipowner thus, in this very technical metallurgical field, must make its own decisions on the many questions presented and, after a disaster, a Court will in each case have to determine whether the shipowner's judgment was right."

Conclusion

For the reasons set forth above and in the petition for a writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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Certificate of Counsel

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58(2) of the Rules of this Court.

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